

Amendment No. 2 to HB1743

Harwell
Signature of Sponsor

AMEND Senate Bill No. 1508*

House Bill No. 1743

by deleting all language after the caption and by substituting instead the following:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-21-105, is amended by designating the existing language as subsection (a) and by adding the following language to be designated as follows:

(b) As used in this section:

(1) "Attaching party" means the pole user or party entering into a pole attachment agreement with a utility;

(2) "Pole owner" means a utility; and

(3) "Utility" means a municipally owned utility operated pursuant to § 7-52-103, or any other public or private act, or a rural cooperatively owned utility doing business pursuant to the authority of title 65, chapter 25, or title 48, chapter 53.

(c) The following best practice standards shall apply to pole attachment contract negotiations:

(1) The utility that owns the pole shall provide sufficient time for meaningful negotiations between the parties. Such contract negotiations shall involve discussions among both parties, and allow for at least a ninety-day negotiating period for any substantial contract changes.

(2) Pole owners shall give appropriate consideration to any adverse impacts on broadband deployment and to providing additional predictability in future pole attachment rates. If a pole user demonstrates that rate increases

will have a material adverse impact on broadband deployment, the parties shall explore mechanisms to mitigate that impact; and

(3) The parties shall explore whether rate increases are justified and can be coordinated with the attaching party's fiscal year end, to mitigate mid-year budget impacts, and further explore the length of contracts generally entered into to determine whether longer contracts could be developed to provide more predictability for future rate changes.

(d)

(1) The board of a utility is authorized to hear and resolve disputes over the rate and other pole attachment contract decisions of the utility. The party requesting to enter into a pole attachment contract with a utility or to modify a pole attachment contract may file a petition with the board for a hearing and decision concerning unresolved issues concerning the pole attachment contract. The board shall hear and render its decision within sixty (60) days of the filing of such petition.

(2) Any party aggrieved by the finding of the board may petition the chancery court for relief on the basis that the board's decision is arbitrary, capricious or without justification in whole or in part. The court may submit the case to mediation or arbitration.

(e)

(1)

(A) There is hereby created a statewide operational working group to be comprised of no more than six (6) representatives: three (3) representing pole owners and three (3) representing pole users.

(B) The speakers of the house of representatives and the senate shall each appoint three (3) representatives who have technical and professional knowledge related to the areas identified in

subdivision (2). Two (2) representatives shall be appointed from each of the three (3) grand divisions of the state.

(C) The Tennessee Cable Telecommunications Association, the Tennessee Municipal Electric Power Association, the Tennessee Electric Cooperative Association and the Rural Cooperative Telecommunication Association may provide the names of knowledgeable persons to be appointed to the working group.

(D) Subject to subdivision (3), such representatives shall be appointed annually by the speakers. Representatives may be reappointed to serve on the working group. Representatives serving on the working group shall receive no state reimbursement for attending meetings of the group. If a vacancy occurs, the speaker making the initial appointment shall make the appointment to fill the vacancy.

(2) The working group shall meet periodically to address operational issues on a coordinated basis and to develop operational "best practices" that would be advisory recommendations to the utilities. The areas for initial discussion shall include, but not be limited to, the following areas:

(A) Mechanisms to coordinate pole permitting, joint pole inventories and joint pole inspections among all attaching parties;

(B) Mechanisms to implement corrections of code and safety violations;

(C) Mechanisms to coordinate make-ready and transfer work among all attaching parties; and

(D) A standardized process for handling code violations, delinquent transfers and unreported attachments.

Additional areas, in the discretion of the working group may be addressed and resolved.

(3) Until, in the discretion of the speakers of the house of representatives and the senate the working group has met the requirements of this subsection (e) at which time the working group shall cease to exist, the working group shall file an annual report with the speakers and with the house commerce committee and the senate commerce, labor and agriculture committee, together with any proposed legislative changes.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.